

REMARKS

The Office Action dated May 22, 2006, has been received and carefully noted. The above amendments to the claims, and the following remarks, are submitted as a full and complete response thereto.

Claims 1-34 and 36-47 are currently pending in the application, of which claims 1, 24, and 47 are independent claims. Claims 1-34 and 36-46 have been amended, and claim 47 has been added, to more particularly point out and distinctly claim the invention. Claim 35 has been cancelled without disclaimer or prejudice. No new matter has been added, and no new issues have been raised that require further consideration and/or search. Entry of the Amendments is respectfully requested because it places the application in condition for allowance, or, in the alternative, in better condition for appeal. Claims 1-34 and 36-47 are respectfully submitted for consideration.

Claims 1 and 24 were again rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0143991 of Minear et al. ("Minear"). Applicant respectfully submits that the claims recite subject matter that is neither disclosed nor suggested by Minear.

Claim 1, upon which claims 2-23 depend, is directed to a method including establishing a data connection for a subscriber. The method also includes establishing a continuous streaming connection between said subscriber and a streaming source. The method further includes terminating the continuous streaming connection between said

subscriber and said streaming source. The method additionally includes charging said continuous streaming connection using a time-based charging.

Claim 24, upon which claims 25-46 depend, is directed to a mobile packet radio system including a streaming source. The system also includes a subscriber configured to receive streaming data from said streaming source. The system further includes a first establishment unit configured to establish a data connection for said subscriber. The system additionally includes a second establishment unit configured to establish a continuous streaming connection between said subscriber and said streaming source. The system also includes a termination unit configured to terminate said continuous streaming connection between said subscriber and said streaming source. The system further includes a charger configured to charge said continuous streaming connection using a time-based charging.

Applicant respectfully submits that Minear fails to disclose or suggest all of the elements of any of the presently pending claims.

Minear generally relates to selectively updating datasets (such as software applications and information) stored on a wireless device. As explained at paragraph [0008], in Minear the wireless device maintains a dataset version summary file and compares its summary file with another summary file located on a download server. If a more recent version of a data-set is detected on the download server, the wireless device can download it to overwrite the dataset currently stored on the wireless device. The

owner of the wireless device may be charged for the network connection time while downloading the more recent dataset.

Claims 1 and 24 recite “a streaming source” and “a continuous streaming connection.” Minear does not disclose at least these features. The Office Action took the position that Minear discloses these features at paragraphs 0008 and 0024. Paragraphs 0008 and 0024, while they do mention connection and downloading generally, do not mention either a “streaming source” or a “continuous streaming connection.” Indeed, the word “streaming” is not found anywhere in Minear. Thus, it can be seen that Minear merely discloses a conventional non-streaming connection.

As paragraph 0026 of the present application mentions, a continuous streaming connection “is a continuous data connection between client, e.g. mobile subscriber 102 and a streaming source, e.g. a streaming server 107. The continuous data connection transfers e.g. video or multimedia content.”

Moreover, as one of ordinary skill in the art would understand, in a continuous streaming connection, the receiving party begins to render the contents of the received data packets essentially immediately upon receiving the first few data packets, that is, without waiting until all the data packets associated with the connection have been received.

Thus, for example, in the case of the data packets of a continuous streaming connection including video content, the video content begins to be displayed essentially

immediately upon receiving the first data packets, and the video content keeps on being displayed, while more data packets are still being received.

Another way to consider a continuous streaming connection is as essentially a real-time connection of a packet switched variety. However, in the arrangement disclosed by Minear, assuming one of the data-sets included video content, the whole dataset would have to be downloaded to the wireless device before the video content could be displayed, as can be seen from paragraph 0008 of Minear.

In other words, Minear fails to teach or suggest a streaming source or continuous streaming connection, neither explicitly nor implicitly. Consequently, Minear further fails to teach or suggest a subscriber capable of receiving streaming data, establishing a continuous streaming connection, terminating the continuous streaming connection, and charging the continuous streaming connection using a time-based charging. Indeed, Minear fails to disclose or suggest any method or apparatus relating to continuous streaming connections, streaming sources, and their uses. Accordingly, it is respectfully requested that the rejection of claims 1 and 24 be withdrawn.

The Office Action replied to the argument above by repeating the Office Action's argument and bolding the comment that the device will be "charged for the network connection time to download the new version of the application." The Office Action explained that "streaming source" was being interpreted as "a download server." Applicant respectfully submits that this is an unreasonable interpretation because it makes the term "streaming" meaningless. Likewise, the Office Action took the position

that “streaming connection” was being interpreted as meaning “downloading” and/or “communication.” Applicant respectfully submits that this interpretation is unreasonable because it makes the term “streaming” meaningless.

As MPEP 2111.01 indicates “the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification.” Making the term “streaming” meaningless cannot possibly be the plain meaning of the word. The Office Action did not rely on the specification in arriving at its interpretation of the claim, as explained at page 15, line 11 et seq. of the Office Action.

Indeed, the Office Action at page 15, states that limitations from the specification will not be read into the claims. Far from asking that limitations be read **into** the claims from the specification, Applicant requests that limitations not be struck **out of** the claims by interpreting a phrase such that one of the words of the phrase is meaningless. The term “streaming” is included in the claim and therefore ought to be accorded its plain meaning. Indeed, Applicant submits that the Office Action is not permitted to interpret words contrary to the plain meaning of the words in the absence of definition in the specification.

Accordingly, reconsideration and withdrawal of the rejection of claims 1 and 24 is respectfully requested.

Claims 2-23 and 25-46 were rejected under 35 U.S.C. 103(a) as being unpatentable over Minear in view of U.S. Patent Application Publication No. 2005/0108156 of Sumino et al. (“Sumino”). The Office Action took the position that

Minear teaches all of the elements of the independent claims and some of the elements of the claims that depend from them, but supplied Sumino to remedy deficiencies of Minear as to certain features of the dependent claims. Applicant respectfully submits that claim 35 has been cancelled without prejudice or disclaimer, and respectfully submits that the rejection is therefore moot as to claim 34. Applicant respectfully submits that claims 2-23, 25-34, and 36-46 recites subject matter that is neither disclosed nor suggested in the cited art.

Claims 2-23, 25-34, and 36-46 depend from independent claims 1 and 24 respectively, and recite additional limitations. Minear is discussed above, and is deficient with regard to the independent claims for the reasons explained above. Sumino does not remedy the deficiencies of Minear, and thus the combination of Minear and Sumino fails to disclose or suggest all of the elements of any of the presently pending claims.

Sumino generally relates to a communication control method in a connection-type device, a related relay device, and an accounting management device. As explained at paragraphs 0005, and 0038-0039, Sumino discusses an arrangement enabling an appropriate communication charge to be made on the basis of an amount of data transmitted even when the communication is prematurely discontinued. The communication is HTTP communication on top of a TCP connection. The amount of data is measured on the basis of the size of each packet and the number of the packets.

Sumino, like Minear, also fails to teach or suggest a streaming source or continuous streaming connection. Rather, Sumino discusses HTTP communication on

top of a TCP connection, that is to say, a conventional Web-browsing session, as can be seen at paragraph [0040] of Sumino. Furthermore, Sumino fails to teach or suggest time-based charging. Rather, Sumino discloses charging based on the amount of data transmitted or the size of each packet and the number of the packets, that is to say, volume-based charging, as can be seen at paragraphs [0040] and [0055].

Indeed, as with Minear, Sumino does not even mention the word “streaming.” Accordingly, it is respectfully submitted that Sumino does not remedy the deficiencies of Minear, and thus that combination of Sumino and Minear fails to disclose or suggest all of the elements of any of the presently pending claims.

The Office Action responded by disagreeing, and stated that “one cannot show nonobviousness by attacking the references individually where the rejections are based on combinations of references,” and cited *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981) and *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant respectfully submits that the Office Action’s reliance on *Keller* and *Merck* is misplaced.

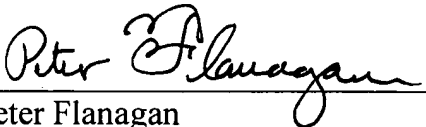
Applicant’s response follows the pattern laid out by the Federal Circuit: identify the deficiencies of the primary reference, and determine whether the secondary reference remedies those deficiencies. *In re Rijckaert*, 28 USPQ2d 1955, 1956-7 (Fed. Cir. 1993). Additionally, as the Federal Circuit has explained, Applicant is not required to show nonobviousness until a *prima facie* case for obviousness has been established. *Rijckaert* at 1957. Additionally, Applicant has not addressed a reference in isolation, like the

applicant in Merck, nor has Applicant provided an affidavit regarding a solitary reference like the applicant in Keller. Accordingly, Applicant's argument complies with the law as set forth by the Federal Circuit. Thus, it is respectfully requested that the rejection of claims 2-23, 25-34, and 36-46 be withdrawn.

For the reasons explained above, it is respectfully submitted that each of claims 1-34 and 36-47 recites subject matter that is neither disclosed nor suggested in the combination of cited references. It is therefore respectfully requested that all of claims 1-34 and 36-47 be allowed, and that this application be passed to issue.

In the event this paper is not being timely filed, Applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,



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